IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8114 OF 2004

Sou. Nalini J. Sapate ...Petitioner

Versus

Special Recovery Officer & Ors. ...Respondents

Shri T.S.Ingale for the Petitioner.
Shri M.H.Solkar A.G.P for State
Shri Dr.V.K.Chowdhari for Respondent Nos.1 & 2.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 19th JANUARY, 2006.

P.C.

1. This Petition under Articles 226 & 227 of the Constitution of India challenges a judgment and order dated 28th July, 2004 passed by Divisional Joint Registrar, Co.operative Societies, Kolhapur in Revision Application No.82 of 2004, by which the petitioner's Revision Application has been dismissed and the order of the Special Recovery Officer dated 6th March, 2004 auctioning the property of the petitioner is

confirmed.

2. The grievance of the petitioner is that although, she is wife of respondent No.4, she has independent right, title and interest insofar as 50% in the House property bearing No.108 and respondent No.4 has ownership right insofar as Survey No.107 within the limits of Atpadi Grampanchayat in Sangli district. Therefore, the auction notice, to the extent it purports to dispose of the property/share therein of the petitioner/applicant, is bad in law. The petitioner is neither a borrower nor a guarantor in respect of the loan which has been availed of by her husband from the Vita Merchants Co-operative Bank Ltd., Vita (District : Sangli).

3. This Court directed issuance of notice to the respondents and on 16th October, 2004, after taking on record an affidavit filed by the

petitioner, directed that 1/2 share in the property(House property) owned and possessed by the petitioner should not be disposed of, and status-quo in that behalf be maintained.

4. On the last occasion, this matter appeared before me and I directed Shri Ingale to place on record the stand of respondent No.4, who is husband of the petitioner. In my view, the course adopted by the parties viz., the petitioner and respondent No.4, is to some how postpone the obligation to pay the amounts and prevent the Bank from executing the recovery certificate against the petitioner’s husband (respondent No.4).

5. The matter was adjourned till today. Today, respondent No.4 - Jaganath Govind Sapate, who is husband of the petitioner, is present in Court. He undertakes to this Court that the liability of the first respondent which is

approximately about six to seven lakhs of rupees, would be cleared by him on or before 20th March, 2006. He further states that he has identified the buyer for the agricultural lands and from the sale-proceeds of the agricultural lands he would clear off the liability of the first respondent Bank. He further undertakes that if payment is not made by this date, it would be open for first respondent Bank to proceed in accordance with law not only against the agricultural lands, but, also the house property.

6. In the light of this statement and undertaking of respondent No.4, it is not necessary to pass further orders in this Petition. Even otherwise, I am satisfied from the materials produced that there is nothing on record to hold that the petitioner-wife has any independent right, title and interest in the House property, in question. Therefore, the Special Recovery Officer was right in issuing an

auction notice. However, since the fourth respondent has undertaken to pay the dues by 20th March, 2006, the order passed by this Court on 16th October, 2004 will continue till 20th March, 2006. Thereafter, it would be open for the first respondent to proceed in accordance with law and not only dispose of the agricultural land, but, also the house property in question, for recovery of the amount due and payable. Leaving all such remedies open, present Petition is disposed of.

(S.C.DHARMADHIKARI, J)